

# SMARA UPDATE



The Quarterly Newsletter of the Department of Conservation - Office of Mine Reclamation

## OMR'S PROCEDURE FOR RELEASING FINANCIAL ASSURANCES

### RELEASE OF FINANCIAL ASSURANCES - Two Scenarios

SMARA, the Surface Mining and Reclamation Act of 1975 (Public Resources Code sections 2710 *et seq.*) discusses how financial assurances for mining operations are created, reviewed, amended, forfeited and released. Recently, the Department of Conservation's (Department), Office of Mine

Reclamation (OMR) received inquiries about the release of financial assurance mechanisms. Two scenarios that involve the release of a financial assurance are commonly encountered. The first scenario involves the release of financial assurance when an operator sells or transfers the mining operation to another person. The second scenario involves release of the financial assurance after the mined lands have been reclaimed.

For purposes of this discussion, release or transfer of financial assurances is described in both the statute and regulations. Section 2773.1 of the Public Resources Code provides the basic detail for release of financial assurances. Section 3805.5 of the California Code of Regulations describes, in greater detail, the responsibilities of a lead agency and of the Department with respect to the release or transfer of a financial assurance. Another pertinent section of statute is PRC section 2779, describing how a suc-

cessor in a mining operation is bound by the provisions of the approved financial assurance. Finally, ordinances adopted by lead agencies pursuant to the requirements of PRC section 2774(a), should contain a section that addresses the Statement of Responsibility for each mining operation.

Generally, financial assurances must be maintained continuously for the life of a mining operation, including any times during which the mining operation is idle, and until reclamation is complete. The amount of financial assurance must be reviewed annually by the lead agency for adequacy. Proposed expansion of operations may require that the amount of financial assurance be increased. Partial reclamation may allow a decrease in the amount. No lapses may occur during the period for which a financial assurance is required. The acceptable term a financial assurance should remain in effect is for the specified term of

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coverage plus an additional 120 days. Additional information on financial assurances can be found in the Financial Assurance Guidelines adopted by the State Mining and Geology Board. The guidelines can be accessed thru the Department's web site at [www.conservation.ca.gov](http://www.conservation.ca.gov).

### Change of Ownership

There are many reasons why a mining operation may change hands. When a change in ownership occurs, the point at issue is the role and responsibility of the former mining operator, the new mining operator, the lead agency and the Department. When a mining operation is sold, or ownership is otherwise transferred, the original owner's financial assurance must remain in effect until the lead agency has approved, after Department review, replacement financial assurances for the new operator. The prior owner's financial assurance can only be released upon the lead agency's approval of the replacement financial assurance. Replacement financial assurances must be approved in the same manner as the existing financial assurances.

OMR commonly witnesses the change of ownership of mining operations. A prudent mining operator will insure that a replacement financial assurance

is approved and in place before the sale or transfer of the mining operation has been completed. Further, the transferring operator should insist that a Statement of Responsibility (see *exhibit*) has been prepared by the new operator and is properly recorded with the lead agency and the Department. Failure to ensure that these two essentials have taken place means the original mining operator will remain responsible for paying for the reclamation of the mining operation even though the original operator may not now own or even have access to the land on which the mining operation exists, and will remain liable to maintain the financial assurances for the mining operation it has "transferred" to another.

In the experience of both OMR and some lead agencies, transfers of mining operations have occurred where these two elements were not properly addressed. Often, operators do not advise OMR or the lead agency that they no longer should be responsible for an operation until after an exchange has been completed. Unfortunately in some cases, the new owner does not fulfill their successor obligation thus putting the original operator in jeopardy with respect to its ability to complete reclamation of a mine site. At that point, neither the OMR nor the lead agency can do much to help the original mine

operator. So long as the mining operation has not been reclaimed, the original financial assurance must be maintained. Until the new owner posts a financial assurance and accepts responsibility for reclamation, OMR and the lead agency will continue to look to the original mining operator as responsible for reclamation and annual reporting for the site.

**Bottom Line:** Make sure the lead agency and OMR each have a valid, approved financial assurance and a properly recorded Statement of Responsibility from the new operator. Note that the Statement of Responsibility by the new operator is for the original operator's reclamation plan obligations, as set out in the approved reclamation plan. If the parties contemplate that there will be substantial reclamation plan changes needed before the new operator will want to assume liability for the mining operation and the reclamation obligations in place at the time a transfer of ownership is contemplated, then the original operator should seek an amendment to the reclamation plan, before the change in ownership is consummated. Only the operator of record may amend a reclamation plan. To be recognized as the operator of record, the "new" operator must first execute a Statement of Responsibility, ***and***, have filed

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new financial assurances in an amount approved by the lead agency.

### Release of Financial Assurance

When should a financial assurance be released? Ultimately, when the mine operator, the lead agency and Department all agree that reclamation is complete, in accordance with the approved reclamation plan.

The responsibility for release of a financial assurance begins with the mine operator. When the operator has completed reclamation, the operator should request a written notice from the lead agency that reclamation has been completed pursuant to the approved reclamation plan. Section 3805.5 of the California Code of Regulation then guides the lead agency thru what is necessary to certify that a mine has been adequately reclaimed. This section is applicable to both a revision in the amount of a financial assurance and a release of one. In effect, the release of a financial assurance is a revision where the change is to reduce the financial assurance from a set amount to zero.

Upon request from an operator, the lead agency performs an inspection of the reclaimed mining site and prepares an inspection report. The completed inspection report, a re-

vised financial assurance cost estimate to zero, and a statement from the lead agency certifying that the site is reclaimed is then forwarded to the Department. The Department may inspect the mine site to verify the status of reclamation. The Department must respond to the lead agency that it either concurs with its finding that reclamation is complete, or that, based upon its own inspection, determines that aspects of the approved reclamation plan are not complete and, therefore, the financial assurance may not be released.

Obviously, if either the lead agency or the Department find that the mine site has not been completely reclaimed, or that other violations remain unresolved, then the financial assurance will not be released.

Once the lead agency has received a concurrence from the Department that the mining operation has been adequately reclaimed and that no violations remain unresolved, then and only then can the financial assurance be released.

**Bottom Line:** Mine operators should make sure that the lead agency receives written notification that the mining operation has been fully reclaimed before requesting a release of the financial assurance. Lead agencies must make a final inspection of the reclaimed site and provide written certifica-

tion to the Department that the site has been reclaimed in accordance with the approved plan. The financial assurance can only be released after the Department issues written concurrence with the lead agency's recommendation that the financial assurances be released.

### Exhibit: Statement of Responsibility

The State Mining and Geology Board developed guidelines that include a model ordinance for use by City and County lead agencies. One element of a lead agency ordinance is a section on Statement of Responsibility. The Statement of Responsibility is an affidavit signed by the person submitting a new reclamation plan, **or, a new mine operator (in the case of a sale or transfer) who is accepting responsibility for an existing reclamation plan.** A Statement of Responsibility may come in any form. The example on the following page is preferred. A copy of a properly executed Statement of Responsibility should be kept by both the lead agency and the Department.

*William Armstrong  
Assistant Director (C.E.A.)  
Office of Mine Reclamation*

**STATEMENT OF RESPONSIBILITY**

I, the undersigned, hereby agree to accept full responsibility for reclamation of all mined lands as described and submitted herein and in conformance with the applicable requirements of Articles 1 and 9 (commencing with Sections 3500 *et seq.* and 3700 *et seq.*, respectively) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations, the Surface Mining and Reclamation Act of 1975, as amended (Section 2710 *et seq.* of the Public Resources Code), and with any modifications requested by the administering agency as conditions of approval.

Signed this \_\_\_\_\_ day of, \_\_\_\_\_ 20 \_\_\_\_\_

**MINE OPERATOR OR OPERATOR'S AGENT**

(Printed Name) \_\_\_\_\_

(Signature) \_\_\_\_\_

**MINE NAME** \_\_\_\_\_

**CA MINE ID #** \_\_\_\_\_

The original copy must be given to the lead agency and one copy forwarded by the lead agency to:

**Department of Conservation  
Office of Mine Reclamation  
801 K Street, MS 09-06  
Sacramento Ca 95814-3529**

**Course Announcement: Static and Seismic Slope Stability for Waste Containment Facilities**

The University of Wisconsin-Madison, Department of Engineering Professional Development will offer a course titled, "Static and Seismic Slope Stability for Waste Containment Facilities," August 3-5, 2004, in Baldwin Park, California. For planners, landfill designers, plan reviewers, construction engineers, site inspectors and facility owners, this course will present the fundamental principles, calculation procedures, analytical techniques and computer modeling for ensuring static and seismic slope stability. Key course topics include:

- Measuring waste and liner properties
- Engineering analysis and design
- Preventing slope failures
- Computer analysis
- Preparing a stability analysis
- Conducting a seismic design study

The course brochure is available at <http://epdweb.engr.wisc.edu/emaG218> or by calling 800-462-0876. For more information about our courses, visit our website at <http://epdweb.engr.wisc.edu>.

### OMR'S NEW 'AB 3098 LIST' IS OUT

The new "AB 3098 List" was published on-line on June 1, 2004. The Office of Mine Reclamation (OMR) quarterly publishes a list of mines regulated under the Surface Mining and Reclamation Act of 1976 (SMARA) that meet provisions set forth under California's Public Resources Code, Section 2717(b). This list is generally referred to as the "AB 3098 List" in reference to the 1992 legislation that established it.

Sections 10295.5 and 20676 of the Public Contract Code preclude State agencies from buying aggregate or other mined minerals from California mining operations that are not on the AB 3098 List. Additionally, the newly enacted Senate Bill 649 (SB 649) prohibits mining operators who are not on the AB 3098 List from selling aggregate or other mined minerals to local governmental agencies.

The most current AB 3098 List, published June 1, 2004, is on OMR's website at:  
[http://www.consrv.ca.gov/OMR/ab\\_3098\\_list/current\\_list.htm](http://www.consrv.ca.gov/OMR/ab_3098_list/current_list.htm).

In order for OMR to place a mining operation on the AB 3098 List, the operation must meet the following five conditions:

- The operation must have a Lead Agency approved Reclamation Plan,
- The operation must have a Lead Agency approved Financial Assurance,
- The operation must have filed its Mining Operation Annual Report,
- The operation must have paid its Reporting Fee,
- The operation must have had its Annual Inspection by the Lead Agency to reflect its operation is in full compliance with SMARA.

A mining operation may be placed on the AB 3098 List if it has a pending appeal with the State Mining and Geology Board regarding its Reclamation Plan or Financial Assurance, provided its appeal has not been pending for more than 180 days.

The AB 3098 List is updated frequently, but no less often than quarterly. Mine operations that become eligible to be put onto the AB 3098 List in those time periods that fall between publications, can contact OMR and request a letter stating that they are indeed on the List.

**DEPARTMENT OF  
CONSERVATION**  
**Office of Mine Reclamation**  
801 K Street, MS 09-06  
Sacramento, CA  
95814

**Questions or Comments?**  
Email the Editor at:  
[SMARAeditor@consrv.ca.gov](mailto:SMARAeditor@consrv.ca.gov)

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Department of Conservation's Office of Mine Reclamation  
801 K Street, MS 09-06  
Sacramento, CA 95814  
(916) 323-9198

Our web site address is <http://www.consrv.ca.gov/omr> The purpose of this publication is to impart the latest reclamation tips/as well as changes in SMARA-related legislation or interpretation of existing statutes by court decisions.

Director: Darryl Young  
Deputy Director: Debbie Sareeram  
Assistant Director for OMR: William Armstrong  
Newsletter Editor: Don Dupras